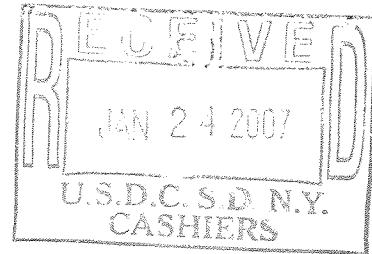


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07 cv 562

## Judge McMahon



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

William Lynch, individually and on behalf of other ) Case No.  
similarly situated employees, )  
Plaintiff, ) **COLLECTIVE ACTION  
COMPLAINT  
(JURY TRIAL DEMANDED)**  
vs. )  
United Services Automobile Association, )  
Defendant. )

---

For his Complaint against Defendant, Plaintiff by and through his attorneys state as follows:

## PRELIMINARY STATEMENT

1. Named Plaintiff William Lynch (“Lynch”) brings this action for unpaid overtime wages on behalf of himself and all other similarly situated current and former employees in the position of special investigator, who Defendant United Services Automobile Association (“USAA”) failed to pay overtime compensation in accordance with the Fair Labor Standards Act

(“FLSA”). For at least three years prior to the filing of this Complaint, Defendant has willfully committed widespread violations of the FLSA by failing to pay these employees for overtime hours worked in excess of forty hours per week at a rate of one and one half times their regular rate of pay.

2. Named Plaintiff Lynch also seeks to recover unpaid overtime compensation on behalf of himself under New York Labor Laws.

### **JURISDICTION**

3. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, this action being brought under the Federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* This Court has supplemental jurisdiction over Plaintiff’s state wage and hour claims, because those claims derive from a common nucleus of operative fact as Plaintiff’s federal claims.

4. Venue is proper in the United States District Court, South District of New York pursuant to 28 U.S.C. § 1331, because a substantial part of the events giving rise to the claims occurred in this District.

### **PARTIES**

5. Plaintiff William Lynch resides at 23 Bluebird Drive, City of Congers, County of Rockland, State of New York. Plaintiff Lynch worked as a Special Investigator in New York, reporting to Defendant’s Northeast Regional Branch office during the applicable statutory of period.

6. Defendant United Services Automobile Insurance is a foreign corporation with its principle place of business in San Antonio, Texas, and doing business in numerous locations

across the country including business in the State of New York. Defendant is an “employer” within the meaning of the FLSA, 29 U.S.C. § 203 (d).

7. Plaintiff and the similarly situated employees are individuals who were, or are, employed by Defendant as “special investigators” working on Defendant’s insurance claims involving potentially questionable, suspect, or fraudulent activity.

**FIRST CLAIM FOR RELIEF**  
**FAIR LABOR STANDARDS ACT**  
**On Behalf of the Nationwide FLSA Collective**

8. Plaintiff hereby incorporates paragraphs one through seven by reference hereto.

9. Plaintiff brings this action on behalf of himself and other similarly situated employees pursuant to 29 U.S.C. § 216(b). Plaintiff’s written consent form is attached hereto as Exhibit A. Also attached are the written consent forms of additional similarly situated individuals who are interested in joining this case as opt-in plaintiffs.

10. The FLSA requires each covered employer such as Defendant to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours per workweek.

11. During the statutory period, as Defendant’s special investigators, Plaintiff and the similarly situated employees routinely worked in excess of forty (40) hours per week without overtime compensation.

12. This practice violates the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., specifically § 207(a)(1). As a result, Plaintiff and the similarly situated employees suffered a loss of wages.

13. By failing to accurately record, report, and/or preserve records of hours worked by Plaintiff and the similarly situated employees, Defendant has failed to make, keep, and

preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201, et seq.

14 The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

**SECOND CLAIM FOR RELIEF**  
**NEW YORK STATE LABOR LAW**  
**On Behalf of the Named Plaintiff William Lynch**

15 Plaintiff hereby incorporates paragraphs one through fourteen by reference hereto.

16. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of New York Labor Law, Article 19.

17. By the course of conduct set forth above, Defendant has violated the New York Labor Law Article 19, §§ 650 et seq., and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142 ("New York Labor Law").

18. New York Labor Law requires an employer, such as Defendant to pay overtime compensation to all non-exempt employees.

19. Defendant has had a policy and practice of failing and refusing to pay proper overtime pay to Plaintiff for his hours worked.

20. As a result of Defendant's failure to pay wages earned and due, and its decision to withhold wages earned and due to Plaintiff, Defendant has violated and continues to violate the New York Labor Law.

21. Plaintiff seeks the amount of his underpayments based on Defendant's failure to pay wages at a rate of one and one half times his regular rate of pay for work performed in excess of forty per week, as provided by the New York Labor Law, and such other legal and

equitable relief from Defendant's unlawful and willful conduct as the Court deems just and proper.

22. Plaintiff seeks recovery of attorneys' fees and costs to be paid by Defendant as provided by the New York Labor Law.

**PRAYER FOR RELIEF**

23. WHEREFORE, Plaintiff Lynch, on behalf of himself and all employees similarly situated who join in this action pray for the following relief:

- a. Designation of this action as a collective action on behalf of the nationwide FLSA collective class and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the nationwide collective class apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);
- b. Judgment against Defendant for an amount equal to Plaintiff's and the putative class members' unpaid back wages at the applicable overtime rate;
- c. An equal amount to the overtime damages as liquidated damages;
- d. All costs and attorneys' fees incurred in prosecuting these claims;
- e. An award of prejudgment interest (to the extent liquidated damages are not awarded);
- f. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
- g. Leave to amend to add claims under applicable state laws; and
- h. For such further relief as the Court deems just and equitable.

24. WHEREFORE, Plaintiff Lynch, on behalf of himself, prays for relief as follows:

- a. Judgment against Defendant for an amount equal to Plaintiff's unpaid back wages at the applicable overtime rate;
- b. All costs and attorneys' fees incurred in prosecuting these claims;
- c. An award of prejudgment interest;

- d. An injunction and declaratory judgment that the practices complained of herein are unlawful under New York Law; and
- e. Such further relief as the Court deems just and equitable.

Dated: January 24, 2007

**OUTTEN & GOLDEN LLP**

~~Jack A. Raisner~~  
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New York, New York 10016  
Telephone: (212) 245-1000

**NICHOLS KASTER & ANDERSON, PLLP**

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Paul J. Lukas, MN Bar No. 22084X  
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**ATTORNEYS FOR PLAINTIFF AND  
PUTATIVE CLASS**

**EXHIBIT A**

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

William Lynch

Print Name

REDACTED

William Lynch  
Signature

Sept 25, 2006  
Date

REDACTED

**Mail or Fax to:** Nichols Kaster Anderson, PLLP  
Attn: Rachhana Srey  
80 South 8<sup>th</sup> Street  
Suite 4600  
Minneapolis, MN 55402

**Fax (attn: Rachhana):** (612) 215-6870  
**Toll Free Telephone:** (877) 448-0492



NKA000076

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

**Andy McFeeley**

REDACTED

Signature

REDACTED

REDACTED

REDACTED

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws.

During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

Stig Alan Larson  
Print Name

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Stig Larson  
Signature

9-28-06  
Date

REDACTED

Mail or Fax to: Nichols Kaster Anderson, PLLP  
Attn: Rachhana Srey  
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Toll Free Telephone: (877) 448-0492

NKA000066

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

JUDITH D. BURCHAM

Print Name

REDACTED

Judith D. Burcham

Signature

09-20-06

Date

REDACTED

Mail or Fax to: Nichols Kaster Anderson, PLLP  
Attn: Rachhana Srey  
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Toll Free Telephone: (877) 448-0492

NKA000090

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

LARRY A. PANGLE

Print Name

REDACTED

Signature

LAP  
9-20-06

Date

REDACTED

Mail or Fax to: Nichols K  
Attn: Rachana  
80 South 6th Street  
Suite 4600  
Minneapolis, MN 55402



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Toll Free Telephone: (877) 448-0492

NKA000091

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

Barbra Shearer McFadries  
Print Name

REDACTED

REDACTED

NKA001871

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

*Robert F. Cliff*

Print Name

REDACTED

*Robert F. Cliff*

Signature

9-20-06

Date

REDACTED

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NKA000075

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

Dennis Ulrich

Print Name

REDACTED

Dennis Ulrich  
Signature

9-24-06

Date

REDACTED

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Suite 4600  
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Toll Free Telephone: (877) 448-0492

[\*]

NKA000077

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

Name: Robert A. DeGroot

REDACTED

*If any of the information has changed, please update as left.  
\*\*COMPLETION OF ALL FIELDS IS NECESSARY\*\**

*Robert A. DeGroot*

Signature

11-20-06

REDACTED

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Nichols Kaster Anderson, PLLP  
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80 South 8<sup>th</sup> Street, Suite 4600, Minneapolis, MN 55402  
Toll Free Telephone: (877) 448-0492

NKA001774

**USAA (UNITED SERVICES AUTOMOBILE ASSOCIATION)  
PLAINTIFF CONSENT FORM**

I hereby consent to join a lawsuit against USAA as a Plaintiff to assert claims against it for wage and hour violations under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and any applicable state laws. During my employment there were occasions when I worked over 40 hours per week for USAA as a special investigator and was not paid for all hours worked.

Print Name

REDACTED

City

Signature

— 3/19/2007

REDACTED

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NKA000084